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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**PROBUILDERS SPECIALTY INSURANCE  
COMPANY, RRG, a District of Columbia Risk  
Retention Group,**

Case No. 3:13-cv-00318-HU

Plaintiff,

**STIPULATED MOTION AND ORDER  
TO STAY CASE WITH LIMITED  
MUTUAL DISCOVERY**

v.

**LONE OAK CONSTRUCTION, an inactive  
Oregon corporation; and MSCI 2007-IQ13  
GRESHAM COMPLEX, LLC, an Oregon  
limited liability company,**

Defendants.

A dispute exists between Plaintiff ProBuilders Specialty Insurance Company, RRG ("Plaintiff") and Defendant MSCI 2007-IQ13 Gresham Complex, LLC ("Defendant Gresham Complex") as to whether there exists grounds to stay or dismiss this case without prejudice pending resolution of *MSCI 2007-IQ13 Gresham Complex, LLC v. Myhre Group Architects, Inc., et. al.*, Multnomah County Circuit Court Case No. 1201-01319 ("Underlying Lawsuit") that gives rise to this coverage lawsuit. On March 29, 2013, Gresham Complex moved to dismiss or stay in the case or, in the alternative, for a more definite statement. There parties have thereafter had additional

discussions, to resolve the issues between them so as to make efficient use of their own resources and those of the Court.<sup>1</sup> Based on those discussions, counsel for Plaintiff and Defendant Gresham Complex have agreed to present the stipulation for a stay set forth below to the Court and move the Court to enter their stipulated motion

### STIPULATED MOTION

PLAINTIFF AND DEFENDANT GRESHAM COMPLEX DO HEREBY STIPULATE AND MOVE THE COURT AS FOLLOWS:

WHEREAS, on February 22, 2013, Plaintiff ProBuilders filed the instant action seeking declaratory relief that certain insurance policies it issued to Defendant Lone Oak, do not include a duty, or an obligation, to defend or indemnify Defendant Lone Oak in the Underlying Lawsuit;

WHEREAS, the Underlying Lawsuit relates, in part, to Defendant Lone Oak's activities as a contractor at a project known as The Crossings at Gresham Station, which is the subject matter of the Underlying Lawsuit. In particular, Defendant Gresham Complex claims various allegations against Defendant Lone Oak related to its responsibility for the construction of The Crossings;

WHEREAS, Defendant Lone Oak tendered the claims raised by Defendant Gresham Complex to Plaintiff for defense and indemnity, and Plaintiff accepted the defense subject to a reservation of rights;

WHEREAS, in response to Plaintiff's complaint, Defendant Gresham Complex brought a motion to dismiss/motion to stay this lawsuit;

WHEREAS, counsel for Plaintiff and Defendant Gresham Complex have met and conferred and reached an agreement as to the resolution of said motion;

WHEREFORE, in the interests of conservation of judicial resources and those of the parties and for good cause Plaintiff and Defendant Gresham Complex agree that the Court shall enter an order (1) staying the complaint filed by Plaintiff as against Defendant Gresham Complex and

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<sup>1</sup> Defendant Lone Oak Construction, Inc. ("Defendant Lone Oak") has not appeared in this case but would be subject to the stipulated stay with limited discovery order.

Defendant Lone Oak until 30 days after judgment is entered (either as a result of an order, verdict, or settlement) in the Underlying Lawsuit; and (2) allowing limited mutual discovery during the pendency of the stay related to the application, underwriting, issuance and sale of the ProBuilders' insurance policies which may include (i) the issuance of subpoenas to third parties and (ii) document discovery of the parties. The parties may seek further expansion of these limited discovery measures during the pendency of this stay by stipulation or leave of the court.

Dated this 26<sup>th</sup> day of April, 2013.

LINDSAY HART, LLP

*s/ Tyson L. Calvert*

By:

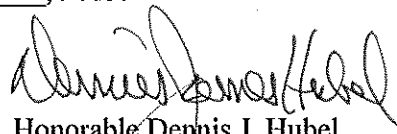
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*s/ Scott J. Kaplan*

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Attorneys for Defendant Gresham Complex

IT IS SO ORDERED this 3<sup>RD</sup> day of May, 2013.

  
Honorable Dennis J. Hubel  
U.S. District Magistrate Judge

CERTIFICATE OF SERVICE

In addition to the electronic filing and service of this document through the CM/ECF system of the U.S. District Court, I hereby certify that on April 26, 2013, I served a copy of the STIPULATED MOTION FOR STAY OF THE CASE WITH LIMITED MUTUAL DISCOVERY on the following person in the manner indicated below at the following address:

M. Patton Echols  
Attorney at Law  
P.O. Box 1768  
Gresham OR 97030

Attorney for Defendant Lone Oak Construction

- ☐ by Electronic Mail
- ☐ by Facsimile Transmission
- ☒ by First Class Mail
- ☐ by Hand Delivery
- ☐ by Overnight Delivery

*s/ Tyson L. Calvert*

By: \_\_\_\_\_

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